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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,052

05/11/2006

Joseph Dussaud

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06/20/2008

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EXAMINER

NGUYEN, SON T

ART UNIT

PAPER NUMBER

3643

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,052	Applicant(s) DUSSAUD, JOSEPH	
	Examiner Son T. Nguyen	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/11/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

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- (I) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. In addition, phrases such as "advantageously", "preferably", "such as", "e.g.", render the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Note, the claims rejected below are rejected as best understood by the Examiner, since Applicant fails to explain the invention clearly through drawings and proper claim language.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1,2,6,10,19** are rejected under 35 U.S.C. 102(b) as being anticipated by Davis (GB 2290691A on form PTO-1449).

For claim 1, Davis teaches a plant protection device in the form of a tube, characterised in that it consists of at least one parchmented or vulcanized fibrous support in the form of a sheet containing annual fibres, the device being biodegradable. See page 1, lines 19-27, page 2, lines 11-17, page 5, lines 6-22.

For claim 2, Davis teaches two concentric tubes. See figs. 2-3.

For claim 6, Davis teaches the fibrous support contains among other things unbleached or bleached vegetal fibres obtained from coniferous or deciduous plants and synthetic fibres, such as e.g. viscose, by themselves or as a mixture. See page 2, lines 11-17, page 5, lines 9-22, the material is being treated with other “things”).

For claim 10, Davis teaches that it is a core produced by rolling spirally the parchmented or vulcanized fibrous support. See page 1, lines 19-27, page 2, lines 1-2.

For claim 19, Davis teaches a plant protection process consisting in positioning the device forming the subject of claim 1 around the plant. See figure 1.

6. **Claims 1,16,17** are rejected under 35 U.S.C. 102(b) as being anticipated by Achim (GB 2104366A on form PTO-1449).

For claim 1, Achim teaches a plant protection device in the form of a tube (see fig. 3), characterised in that it consists of at least one parchmented or vulcanized fibrous support in the form of a sheet containing annual fibres (made out of paper fibers), the device being biodegradable.

For claim 16, Achim teaches the fibrous support is a folding corrugated sheet (page 1, lines 60-65,87-99).

For claim 17, Achim teaches the corrugated sheet is glued between two parchmented and/or vulcanized sheets (page 1, lines 66-72).

7. **Claims 1,18** are rejected under 35 U.S.C. 102(b) as being anticipated by Proctor (3958365).

Proctor teaches a plant protection device in the form of at least one parchmented or vulcanized fibrous support in the form of a sheet containing annual fibres (made out of coconut fibers), the device being biodegradable. The fibrous support of Proctor has the form of a pot, the bottom of which is obtained by folding the free end of a core inwards.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 3,4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis as applied to claim 1 above, and further in view of Bugler et al. (6481155).

Davis' tube lacks a cut in the tube along the entire length thereof.

Bugler et al. teach in the same field of endeavor of plant protector as that of Davis, where Bugler et al.'s protector is a tube support with a slot or cut 2 along the entire length of the tube support. It would have been obvious to one having ordinary skill

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in the art at the time the invention was made to employ a cut as taught by Bugler et al. in the tube of Davis in order to provide easier removal the tube from the plant.

10. **Claims 5,7,11-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (as above).

For claim 5, Davis is silent about the fibrous support contains at least 20 %, advantageously at least 50 %, preferably 75 % by weight of annual plant fibres. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the fibrous support of Davis with at least 20 %, advantageously at least 50 %, preferably 75 % by weight of annual plant fibres, depending on how slow or fast the user wishes the support to decompose or deteriorate.

For claim 7, Davis is silent about the parchmented or vulcanized fibrous support has a grammage of 50 - 250 g/m², advantageously 100 g/m². It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the fibrous support of Davis with a grammage of 50 - 250 g/m², advantageously 100 g/m², depending on the degree of protection one wishes to employ for the various type of plants.

For claim 11, Davis teaches the core is produced by superposing 2 - 15, advantageously 5, parchmented or vulcanized sheets, the lower face of each sheet being coated with adhesive. See page 2, lines 11-17, page 5, lines 6-20.

For claim 12, Davis is silent about the core has a diameter of at least 120 mm, advantageously of 360 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the core of Davis with a diameter of

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at least 120 mm, advantageously of 360 mm, depending on where one obtain the material for making up the tube. For example, from metal foil rolls, toilet rolls, kitchen rolls, etc. as stated on page 1, lines 25-27 of Davis.

For claim 13, Davis teaches the core is produced by superposing 2 - 5, advantageously 3, parchmented or vulcanized sheets, the lower face of each sheet being coated with adhesive. See page 2, lines 11-17, page 5, lines 6-20.

For claim 14, Davis is silent about the core has a grammage of 300 - 400 g/m², advantageously of 350 - 360 g/m². It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the fibrous support of Davis with a grammage of 300 - 400 g/m², advantageously of 350 - 360 g/m², depending on the degree of protection one wishes to employ for the various type of plants.

For claim 15, Davis teaches the adhesive consists exclusively of biodegradable polymers chosen from the group comprising polyvinyl alcohol, natural rubber, starch, gelatine, polysaccharides, arabic gum, alginate and carboxymethyl cellulose. See page 5, line 18.

11. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis as applied to claim 1 above, and further in view of Koffler et al. (4829707).

Davis is silent about the tube having a transparency of between 15 % and 25 %, advantageously of 20 %.

Koffler et al. teach in the same field of endeavor of plant protector as that of Davis, where Koffler et al.'s protector is a tube support that is transparent. It would have been obvious to one having ordinary skill in the art at the time the invention was made

to have the tube of Davis be transparent as taught by Koffler et al. in order to allow certain light spectrum which are involved in photosynthesis to be transmitted through the transparent material to the plant while other potentially harmful portions of light spectrum are blocked out (col. 1, lines 55-65 of Koffler et al.).

Davis as modified by Koffler et al. is silent about the transparency between 15 % and 25 %, advantageously of 20 %. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have transparency in the tube of Davis as modified by Koffler et al. be between 15 % and 25 %, advantageously of 20 %, depending on the amount of light spectrum one wishes the plant to absorb.

12. **Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over Davis as applied to claim 1 above, and further in view of Reese (4341039).

Davis is silent about the vulcanized or parchmented fibrous support is covered with several fungistatic, fungicidal or bactericidal repulsive products sprayed to the surface thereof.

Reese teaches in the same field of endeavor of plant protector as that of Davis, where Reese's protector is a tube support that is covered with a fungicide (col. 2, lines 66-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the tube of Davis be sprayed with a fungicide as taught by Reese in order to provide an undesirable environment for mildew and fungus (col. 2, lines 65-67, col. 3, lines 1-2 of Reese).

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/
Primary Examiner, Art Unit 3643